

Harrison, Brenda

From: Golightly-Howell, Velveta
Sent: Tuesday, November 10, 2015 2:09 PM
To: Covington, Jeryl
Cc: Dorka, Lilian; Temple, Kurt; Wooden-Aguilar, Helena; Harrison, Brenda
Subject: RE: Arrowhead Investigation: EPA File No. 12R-13-R4
Attachments: Arrowhead - Reply to EarthJustice Extension Request (11.10.2015).docx

Hi Jeryl. Here's the reply to e-mail to Ms. Lado-Engelman today. Brenda will scan the signed letter and send it to you for transmittal to the attorney. I've also asked Brenda to send the reply via certified mail, return receipt requested. At this time, no reply will be made to inquiries 1 and 2. Let me know if you have any questions. Thanks.

Velveta

From: Covington, Jeryl
Sent: Thursday, November 05, 2015 7:53 AM
To: Golightly-Howell, Velveta
Cc: Dorka, Lilian; Temple, Kurt; Wooden-Aguilar, Helena
Subject: RE: Arrowhead Investigation: EPA File No. 12R-13-R4
Importance: High

How do you wish to answer the following inquiries in the response to Earthjustice? Please let me know some details for your response. Particularly:

- Do you wish to acknowledge before the final document is prepared that conclusions about the investigations have been made? If you wish to acknowledge such, I anticipate that an immediate follow-up inquiry is anticipated from Earthjustice will be to request this information as the original email indicates that there was a prior request for a copy of the investigation report.
- Is OCR going to schedule the town hall meeting to address the resident's questions? The request for such meeting has been long-term and no decision was made during the protocol meeting during my attendance. If the decision is to honor this request, when will the scheduling of this meeting occur?
- Is OCR willing to accept the request for an extension for submission of additional dust sample results and water evaluation?

Upon receipt of your response, I will prepare a draft email for your review and submission.

Please note that due to my computer refresh, I will not have a computer on Friday, November 6.

From: Golightly-Howell, Velveta
Sent: Wednesday, November 04, 2015 7:34 PM
To: Covington, Jeryl <Covington.Jeryl@epa.gov>
Cc: Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>
Subject: Re: Arrowhead Investigation: EPA File No. 12R-13-R4

Thanks Jeryl. Please prepare a draft reply and forward it to Kurt.

Velveta

Sent from my iPhone

On Nov 4, 2015, at 3:00 PM, Covington, Jeryl <Covington.Jeryl@epa.gov> wrote:

I am in receipt of the following response from Marianne Engelman-Lado related to my conveying your decision not to accept additional information for the Arrowhead investigation.

Three requests are being made with a desired response:

- Have preliminary conclusions/recommendations be made in the investigation?
- Follow-up to the requested town hall meeting with the Director with the community.
- Request to extend the submission of additional information until March 1, 2016.

Please let me know how you wish to respond.

From: Marianne Engelman Lado [<mailto:mengelmanlado@earthjustice.org>]
Sent: Wednesday, November 04, 2015 2:42 PM
To: Covington, Jeryl <Covington.Jeryl@epa.gov>
Cc: Matthew Baca <mbaca@earthjustice.org>; Lisa Evans <levans@earthjustice.org>
Subject: Arrowhead Investigation: EPA File No. 12R-13-R4

Dear Ms. Covington,

This letter is intended as a quick response to your telephone call yesterday afternoon, Tuesday, November 3rd, 2015. As I understood it, you called in follow up to the interview conducted by you and others at the Office of Civil Rights (OCR), as well as the Office of General Counsel, with (b) (6) Privacy, (b) (7)(C) Enforcement on Thursday, October 29th, during which (b) (6) Privacy, (b) (7)(C) Enforcement mentioned that she had more recently conducted follow up testing and that she would be willing to share the results of that testing. During yesterday's call, you indicated that you had spoken with OCR's director, Velveta Golightly-Howell, and that she was closing the record of the investigation. I wasn't clear what it meant in this context to close the record, but it sounded as if OCR was not interested in receiving follow up information from (b) (6) Privacy, (b) (7)(C) Enforcement or any other supplement to the record.

I have a number of questions regarding the significance of "closing" the record. Does this step suggest that EPA has come to preliminary conclusions and recommendations, if any? If not, wouldn't EPA continue to collect information that might be relevant to the investigation?

OCR should not arbitrarily "close the record" without advance notice to the complainants. We request that the record remain open until March 1, 2016 in order to provide time for complainants to provide additional information.

Notably, during OCR's site visit to Uniontown last fall, OCR staff indicated that they only had time to interview a subset of the witnesses we suggested and would follow up with complainants about possible interviews with additional members of the community who had been affected by Arrowhead Landfill and, in particular, the operation of the Landfill under the permit approved by the Alabama Department of Environmental Management (ADEM). OCR also postponed a town hall style meeting that complainants had organized, communicating to complainants that the Director wanted to be present and hold a "listening session." Complainants had viewed the meeting as an opportunity for the investigators to meet and hear from additional members of the community who had experienced impacts, and communicated to OCR that this community had already participated in "listening

sessions.” Nonetheless, complainants were awaiting follow up from OCR and ready to organize additional interviews and a meeting for OCR staff and community residents. At no time since have OCR staff communicated that investigators were no longer interested in meeting with additional witnesses or that they had a deadline for arranging follow up interviews.

Moreover, OCR’s history would not suggest that the OCR would “close” the record on a date certain this year. As you know, many investigations drag out for years, even decades. Though I can appreciate that OCR may be taking efforts to conduct investigations in a more timely manner, OCR provided no indication that the door would suddenly close to new information or that closure was imminent.

The timing of this decision is particularly surprising in that I had communicated last week that complainants are working with an expert to conduct additional soil and dust sampling and, also, Dr. Dobbins communicated that she had recently conducted additional water sampling. It’s hard to understand how an agency conducting an investigation in good faith would close the door arbitrarily, without notice, to additional relevant information.

As you know, OCR’s external compliance record has been under the spotlight. Timeliness is, however, but one area of concern. Yes, investigations should be, in the words of OCR’s recently released draft External Compliance and Complaints Program Strategic Plan, “prompt” and “efficient,” but OCR’s operations should also be conducted in compliance with and in furtherance of principles of environmental justice, which includes “meaningful involvement” of communities. See EPA, “What is Environmental Justice?” at <http://www3.epa.gov/environmentaljustice/>. Moreover, investigations (and compliance reviews) must be thorough. Complainants submit allegations, but it is up to OCR staff to reach out to witnesses, take and analyze samples, and, in short, conduct the investigation. As Dr. Dobbins suggested, her findings are indicative of impacts; they provide a reasonable basis for further investigation. Complainants are deeply concerned that they have no evidence that OCR has followed up on leads and conducted a thorough investigation. At minimum, complainants would expect that OCR would be interested in information that complainants can provide and that if OCR is going to “close the record,” that OCR would provide ample notice.

Again, I renew the request that the record remain open for additional evidence until March 1, 2016.

I look forward to your response.

Sincerely,

Marianne

Marianne Engelman Lado
Senior Staff Attorney
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